

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

WILFREDO GOLEZ

Plaintiff,

vs.

JOHN E. POTTER, POSTMASTER  
GENERAL; U.S. POSTAL SERVICE

Defendants.

CASE NO. 09-cv-965 AJB (WMc)

**ORDER RE: ISSUANCE OF  
DEPOSITION SUBPOENA  
[DOC. NO. 102.]**

**I. INTRODUCTION**

On July 7, 2011, Plaintiff *pro se* filed a Motion for Leave of Court to Allow Subpoena. [See ECF No. 102.] In his motion, Plaintiff requests the Court issue a deposition subpoena and seeks the Court's assistance in locating witness Michael Boisvert for deposition. *Id.*

**II. STANDARD OF REVIEW**

In accordance with Rule 45(a)(3) of the Federal Rules of Civil Procedure, “[t]he clerk must issue a subpoena, signed but otherwise in blank, to a party who requests it. That party must complete it before service.” Fed. R. Civ. P. 45(a)(3).

**III. DISCUSSION**

The Court will direct the Clerk of Court to mail to Plaintiff, with this order, one signed but otherwise blank deposition subpoena form [AO-88A “Subpoena to Testify at a Deposition in a Civil Action.”] which should be completed by Plaintiff. Plaintiff's *in forma pauperis* status allows him assistance in the service of a completed deposition subpoena by the United States Marshal.

1 However, Plaintiff is advised he must comply with Rule 45 which requires non-party witnesses to  
 2 be personally served with subpoenas that are accompanied by money orders for witness fees and if  
 3 applicable, travel expenses. Fed R. Civ. P 45; 28 U.S.C. § 1821. Plaintiff is further notified that  
 4 as with party witnesses, Plaintiff must bear the costs of recording the non-party deposition as well  
 5 as transcribing the deposition if he intends to use it as evidence in a future proceeding. In  
 6 addition, Plaintiff must also arrange for the deposition of a non-party witness to be conducted  
 7 before a deposition officer.

8 With respect to Plaintiff's request for assistance in actually locating non-party witness  
 9 Michael Boisvert, the U.S. Marshal has no duty to locate persons for purposes of service. *See e.g.*  
 10 *Walker v. Summer*, 14 F.3d 1415, 1421-22 (9<sup>th</sup> Cir. 1994). It is Plaintiff's responsibility to provide  
 11 the U.S. Marshal with accurate and sufficient information to effect service. Plaintiff must use his  
 12 own methods such as an electronic search or California Public Records Act request in order to  
 13 determine the location of the witness he seeks to depose.

14 **IV. CONCLUSION AND ORDER THEREON**

15 For the reasons articulated above, Plaintiff's Motion for "Leave of Court to Allow  
 16 Subpoena" is **granted in part and denied in part**. Accordingly, IT IS **HEREBY ORDERED**  
 17 that:

18 1. Plaintiff's request for a subpoena form is **GRANTED**. The clerk is instructed to send  
 19 Plaintiff one subpoena form [AO-88A] and a copy of Rule 45 of the Federal Rules of Civil  
 20 Procedure;

21 2. Plaintiff's request for the Court's assistance in locating witness Michael Boisvert is  
 22 **DENIED**.

23 **IT IS SO ORDERED.**

24 DATED: July 21, 2011

  
 25 Hon. William McCurine, Jr.  
 26 U.S. Magistrate Judge  
 27 United States District Court

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